

HAROLD M. HOFFMAN
ATTORNEY AND COUNSELOR AT LAW

240 GRAND AVENUE
ENGLEWOOD, NEW JERSEY 07631-4352 Tel + 1 201 569 0086
Fax + 1 201 221 7890

Member: New Jersey & New York Bars hoffman.esq@verizon.net

August 5, 2022

Honorable Michael A. Hammer, U.S.M.J.
United States District Court
District of New Jersey
50 Walnut Street, Room 2042
Newark, NJ 07101

Re: KEEGAN V. SPINOGATTI, et ano.; 22-cv-04283-JMV-MAH

Honorable Magistrate Judge Hammer:

I am counsel for Plaintiff who brings a putative, nationwide class action alleging that Defendants marketed a male enhancement product represented and labeled as wholly herbal, but which was covertly adulterated with *Sildenafil*, a pharmaceutical available by prescription only. Plaintiff's claim of adulteration is supported by the analysis of a prominent testing laboratory, which is annexed to the Complaint.

I write now because I wish to serve a subpoena on *Amazon*, the platform on which the product was marketed and sold to Plaintiff and consumers throughout the country. A Rule 16 conference has not yet been scheduled and Rule 26 bars even third-party discovery without consent, or leave of Court. Defendants' counsel has asked me to not serve the subpoena which is presently in the hands of a process server in the State of Washington, *Amazon's* home base. I have advised the process server to await further instruction before making service.

The purpose of the subpoena is, among other things, to validate that Defendants were the vendors of the product in question, even though the purchase was fulfilled by *Amazon*. I also seek *Amazon* records concerning testing of the product, if any; the reason for its withdrawal from the Amazon platform (after suit was filed); and, sales records to support, among other things, my claim that this case meets the monetary minimum of

the *Class Action Fairness Act*. There is obviously no burden imposed on Defendants by a third-party subpoena and there exists good cause to allow a subpoena which seeks highly relevant information which *Amazon* is unlikely to produce before the Rule 16 conference takes place. I simply wish to avoid a month, or two, of *dead time* while we await scheduling by a very busy Court. (I am also advised that your Honor's Deputy is out until sometime next week).

I have spoken to your Honor's law clerk who confirmed that a letter to Court would be appropriate. I do not wish to burden the parties and the Court with motion practice on an issue that is supported by good cause. The request to Amazon is wholly justified, has clear purpose and a narrow focus. Perhaps most important, as noted, it imposes no burden on Defendants, who will share any and all materials produced. I therefore respectfully request leave to instruct the process server to proceed.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'H. Hoffman', is written over a horizontal line.

Harold M. Hoffman

cc: Counsel for Defendants (via ECF) April 20, 2020